

VZCZCXRO7870

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DE RUEHIT #0381/01 1980636
ZNR UUUUU ZZH
P 160636Z JUL 08
FM AMCONSUL ISTANBUL
TO RUEHZL/EUROPEAN POLITICAL COLLECTIVE PRIORITY
RUEHC/SECSTATE WASHDC PRIORITY 8323
INFO RUEHAK/AMEMBASSY ANKARA PRIORITY 7799
RUEHTH/AMEMBASSY ATHENS PRIORITY 0864
RUEHIT/AMCONSUL ISTANBUL PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RUEAIIA/CIA WASHDC PRIORITY
RHEHAAA/WHITE HOUSE WASHDC PRIORITY
RUEKJCS/DIA WASHDC PRIORITY

UNCLAS SECTION 01 OF 02 ISTANBUL 000381

SIPDIS

E.O. 12958: N/A

TAGS: [PGOV](#) [PHUM](#) [TU](#) [AA](#)

SUBJECT: BUYUKADA ORPHANAGE: POSITIVE OUTCOME FOR
ECUMENICAL PATRIARCH AT ECHR

REF: A. 06 ISTANBUL 524

[1](#)B. 07 ISTANBUL 83

[1](#)1. Summary: On July 8 the European Court of Human Rights entered judgment in favor of the Ecumenical Patriarchate and against the Government of Turkey (GOT) in a case concerning the Patriarchate's title to a former orphanage that had been annulled by the Turkish authorities. The GOT claimed that under Turkish law the Patriarchate does not enjoy the status of a 'legal personality' and therefore is not entitled to property ownership. The Patriarchate's case relied on Article 14 (prohibiting discrimination based on religion and other protected characteristics) and Article 1 (protection of property) of the First Protocol of the European Convention on Human Rights. End summary.

[1](#)2. Built originally as a hotel by French architect Alexandre Vallauray in the 1890s, the wife of Georges Zarifi, banker of Ottoman Sultan Abdul Hamid II, purchased the buildings and subsequently donated them to the Patriarchate in 1902 with the stipulation that the property be used as a dormitory for Greek orphans.

- In 1903, the Patriarchate ceded the use of the property (but not the title) to the Orthodox "Foundation of the Buyukada Greek Orphanage for Boys" (OB).

- The Foundations Act of 1935 recognized the legal personality of the Orphanage, and the property was mentioned in the registry of properties declared by the Foundation in [1](#)1936.

- In 1964, the Turkish authorities closed the facility for safety reasons.

- In 1999, the General Directorate of Foundations undertook a court case to revoke the Patriarchate's deed of ownership(Ref).

- In October 2004, the Court of Cassation held that, subsequent to the declaration registered by the OB in 1936, the property had belonged to the OB and no longer to the Patriarchate. As the government had previously taken over the OB in 1997 due to dwindling numbers of administrators within the community, the building reverted to government control.

[1](#)3. The ECHR determined that Turkey had violated Article 1 of the First Protocol of the European Convention on Human Rights. This article states that "every natural or legal person is entitled to the peaceful enjoyment of his possessions and that he shall not be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." According to the ECHR, the key to the case is the distinction between usage and ownership. The

declaration of registration in 1936 stated that the OB ran the orphanage but not that it was the owner of the premises. The ECHR found nothing in the record of the case to suggest that the usage had the effect of nullifying the original title. The ECHR will announce its verdict on monetary indemnities at a later date. Turkey has the option to apply for a rehearing of the case within three months.

¶4. The case against Turkey is not solely about property rights issues, but more importantly about minority rights. In 1935, the Turkish Government passed the Law of Foundations, requiring that all community foundations list their immovable properties and submit the list to the government. Many Greeks who departed Turkey after 1936 left their property to local churches; however, these properties remain in the hands of GOT or third party owners because the government did not recognize these post-1936 transfers to the foundations. Because the original owners were absent upon investigation, and the GOT does not recognize the legal personality of churches, the title then reverted to the state. The minority population began bringing property claims to the ECHR thus internationalizing the issue and pushing the GOT to amend the Foundations Law which was enacted in early 2008 following a presidential veto in 2006. The Foundations Law as amended will return properties that have not been sold and are still under state control. It will neither return nor provide monetary compensation for properties that were confiscated by court orders or sold to third parties by the state, nor return to foundations the control

ISTANBUL 00000381 002 OF 002

of properties whose administration was taken over by the state. The current law does not end the confiscation of the properties of community foundations when the property is vacant or the title owner absent.

¶5. The Patriarchate is not optimistic that this case will have a broad impact on the treatment of other confiscated properties. Paul Gikas, a representative of the Greek Ecumenical Patriarchate, explained that the orphanage is the only property to which the Patriarchate had clear title, making the case before the ECHR very strong. While the Greek community and churches claim ownership of nearly 2000 other properties, according to Gikas, the Turkish government still refuses to consider property claims arising after the 1936 property registration.

¶6. Comment: GOT has not yet officially reacted to the verdict. Theoretically, it could request a rehearing of the case within three months, comply with the verdict, or ignore it and force the Patriarchate to seek enforcement measures. Past ECHR decisions have resulted in the Government of Turkey (GOT) paying monetary damages rather than returning confiscated properties. In this case, where the Ecumenical Patriarch would prefer to retain title to the site, it remains to be seen whether the GOT will comply with the court via monetary damages, dashing the Patriarchate's hope to regain the property, or whether they will return the actual orphanage site. There is not a specific timeframe for the Court's remuneration deliberations, but prior experience with ECHR decisions suggests compliance on part of the GOT. End Comment.

WIENER